

# **Exhibit E**

## Jeffrey N. Leibell

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**From:** Jeffrey N. Leibell  
**Sent:** Thursday, October 24, 2019 9:45 AM  
**To:** 'mseltzer@susmangodfrey.com'; Reiss, William V.  
**Cc:** Robin NIEMIEC (rniemiec@frsco.com)  
**Subject:** RE: Auto Parts Indirect -- Auto Insurer Subrogation Claims - SUBJECT TO FRE 408 PROTECTION  
**Attachments:** FRS Letter to Hon Marianne O Battani (2019-10-17).pdf

Counsel:

I'm following up on my email below. We are available next week for a call, and continue to hope that you will agree with our position so that it will not be necessary for us to submit our letter to the Court. If you are interested in discussing the matter further with the goal of avoiding judicial intervention, please let us know by close of business tomorrow (Friday, October 25) your availability for a call next week. If we do not hear from you by then, we will interpret your silence to mean that you do not want to engage further, and will proceed accordingly.

Again, thank you for your continued consideration.

**Jeffrey N. Leibell**  
Chief Legal & Financial Officer  
201.853.1246 | jleibell@frsco.com | [LinkedIn](#)

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**FRS** Financial Recovery Strategies  
80 Wesley Street, South Hackensack, NJ 07606  
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**From:** Jeffrey N. Leibell  
**Sent:** Thursday, October 17, 2019 8:51 AM  
**To:** 'mseltzer@susmangodfrey.com' <mseltzer@susmangodfrey.com>; Reiss, William V. <WReiss@RobinsKaplan.com>  
**Cc:** Robin NIEMIEC (rniemiec@frsco.com) <rniemiec@frsco.com>  
**Subject:** Auto Parts Indirect -- Auto Insurer Subrogation Claims - SUBJECT TO FRE 408 PROTECTION

Counsel:

When we spoke in January, we agreed to disagree on whether auto insurers may recover from the EP settlements the indemnity payments they made for eligible vehicles that were deemed a total loss. Among other things, you referred us to the precedent that the Round 3 Defendants cited in their objection to GEICO's exclusion request. We have re-reviewed the cases cited by the Round 3 Defendants, and, as explained in the attached draft letter, we do not believe that they are on point or persuasive.

We also briefly discussed the mechanism for bringing this issue to the attention of the Court in the event that we continued to disagree. In that regard, we explained why it was not practical for us to file the claims, wait for them to be rejected and then appeal that rejection; instead, we agreed to discuss the matter further at a later point. With the December 31, 2019

filings deadline approaching, we believe that it is now time either to reach an agreement or to seek the Court's assistance. But before we send the letter to the Court, we would like to speak with you again to see whether, after reading it, your views have changed or you have any other positions that may change ours. If we continue to disagree, we would like to include in the letter an agreed upon schedule. While we may not agree on the merits, we should be able to cooperate in having the Court address the matter.

Please let us know your availability this week or next.

Thank you for your continued consideration.

**Jeffrey N. Leibell**

Chief Legal & Financial Officer

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